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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA, BILLINGS DIVISION**

W.V.G., a minor,  
by his father, guardian, and next friend,  
William V. Graham III,

Plaintiff,

vs.

BILLINGS CLINIC, a corporation,  
and MAUREEN C. LUCAS, MD,

Defendants.

Civil Action No. 17-1-BLG-SPW-TJC

**COMPLAINT  
and  
DEMAND FOR JURY TRIAL**

COMES NOW the Plaintiff, W.V.G., a minor child, by and through William V. Graham III, his father, natural guardian, and next friend, and for his claims against the Defendants alleges as follows:

I.

Plaintiff W.V.G. and his father, natural guardian, and next friend, William V. Graham III, are citizens of the State of Washington.

II.

Defendant **Billings Clinic** is and at all relevant times was a corporation organized and existing under the laws of the State of Montana with its principal place of business in Billings, Yellowstone County, Montana; a citizen of the State of Montana; and, engaged in business in Billings, Montana, as a health care provider and hospital under various assumed business names including “Billings Clinic” and “Billings Clinic Hospital.”

III.

Defendant **Maureen C. Lucas, MD**, is and at all relevant times was an obstetrician employed by Billings Clinic, and a citizen of the State of Montana.

IV.

This Court has jurisdiction of this action by virtue of 28 U.S.C. § 1332 in that the Plaintiff and the Defendants are citizens of different states, and the amount in controversy, without interest and costs, exceeds the sum of \$75,000.

V.

At all relevant times, Defendant Billings Clinic was engaged in the business of providing health care and treatment to the public in Billings, Montana, including prenatal obstetrical care and treatment at its clinics, as well as obstetrical, labor, delivery, and pediatric care and treatment at Billings Clinic Hospital, by and through its agents and

employees including Defendant Maureen C. Lucas, MD, other physicians, nurses, and other health care providers and personnel, all of whom were acting within the course and scope of their employment/agency; and, Billings Clinic is vicariously liable for the negligent acts/omissions of its agents/employees, and the consequent injuries and damages to Plaintiff, described below.

VI.

W.V.G.'s mother, Miriette Graham, was admitted to Billings Clinic Hospital in labor on the morning of September 23, 2007, for obstetrical, labor, delivery, pediatric, and other health care and treatment in connection with the imminent birth of her full-term baby, W.V.G.; and, Dr. Lucas, a board-certified obstetrician, was the attending obstetrician for Miriette Graham and her unborn son.

VII.

The labor continued for approximately 14 hours from admission on the morning of September 23rd and into the early morning of September 24, 2007, when W.V.G. was delivered at 12:30 a.m.

VIII.

As the labor continued into the evening and nighttime hours of September 23rd, W.V.G. began suffering from inadequate oxygenation, which progressed to fetal distress that night and into the early morning of September 24th, which was or should have been apparent to and recognized by the attending nurses and Dr. Lucas by virtue of non-reassuring and concerning fetal heart monitor (FHM) tracings.

IX.

The Defendants deviated from applicable standards of care and were careless and negligent in providing health care and treatment for W.V.G. and his mother during the labor, delivery, and/or early post-partum period.

X.

Without limiting the generality of the foregoing, the Defendants failed to meet applicable standards of care and were careless and negligent in multiple respects during the labor, delivery, and/or early post-partum period, including but not limited to the following:

- A. The attending nurses and Dr. Lucas should have recognized, and should have timely and adequately responded to, increasingly concerning and non-reassuring FHM tracings during the last several hours of the labor (including but not limited to FHM and tocodynamometer tracings indicating decelerations with late onsets, progressive increases and wide fluctuations in the baseline fetal heart rate, and other indications of fetal hypoxia and distress), but failed to do so;
- B. Dr. Lucas should have ordered and performed a C-section delivery by 11:00 p.m., and no later than 11:30 p.m., on the night of September 23, 2007, but failed to do so, and instead negligently delayed until the baby was in fetal distress and then made multiple unsuccessful attempts at vacuum-delivery;
- C. Given Dr. Lucas's failure to order and proceed with a timely C-section delivery, the attending nurses should have advocated for the baby and pursued chain-of-command procedures to provide for the safe management of the labor and a timely C-section delivery, but failed to do so;
- D. In light of the non-reassuring FHM tracings and clear indications of fetal hypoxia and distress, Dr. Lucas and/or the attending nurses should have arranged for a pediatrician and/or specialized personnel to be present at the time of delivery to immediately undertake and manage resuscitation procedures, but failed to do so;

- E. The Defendants failed to adopt, implement, enforce, and/or conform to hospital standards, guidelines, rules, policies, and procedures;
- F. Defendant Billings Clinic failed to adequately train its obstetrical nursing staff in fetal heart monitoring to enable them to recognize non-reassuring FHM tracings and fetal distress, to know when to question a physician's judgment and advocate on behalf of their patients, including the unborn baby, and if necessary to invoke the chain-of-command, all in order to protect the safety and well-being of both mother and baby; and/or;
- G. The Defendants otherwise deviated from applicable standards of care and were careless and negligent in providing health care and treatment under the circumstances.

XI.

As a result of the Defendants' carelessness, negligence, and departures from applicable standards of care during the labor, delivery, and/or early post-partum period, W.V.G. suffered serious bodily injuries, including hypoxic brain damage, and has suffered and will suffer physical pain and discomfort, physical impairment and disability, emotional distress, diminished quality of life, diminished ability to enjoy life, diminished ability to pursue various occupational and recreational activities, and losses of income and income capacity; and, has incurred and will incur considerable expenses for health care, personal care, assistance, equipment, and living arrangements; has undergone and will have to undergo various medical procedures, treatments, and therapies; and has been and will be otherwise harmed, injured, and damaged, all to his past and future economic and non-economic damage in amounts to be determined herein.

XII.

All conditions precedent have occurred or been performed, including the processing to completion of an application for review of claim before the Montana Medical-Legal Panel.

WHEREFORE, the Plaintiff demands judgment against the Defendants in a total amount to be determined herein for all past and future economic and non-economic damages which he is legally entitled to recover, together with prejudgment interest thereon to the extent allowed by law, his costs of suit, and such other and further relief as the Court may deem to be fair and equitable under the circumstances.

PLAINTIFF DEMANDS TRIAL BY JURY ON ALL ISSUES SO TRIABLE.

DATED this 4th day of January, 2017.

**GRUBBS LAW OFFICE, PLLC**

**EISELEIN LAW FIRM, PLLC**

By: /s/ Larry G. Grubbs  
Larry G. Grubbs  
*Co-Counsel for Plaintiff*

By: /s/ Michael G. Eiselein  
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